International Longshoremen's Association, Local 1566, AFL–CIO *and* Holt Cargo Systems, Inc. and International Association of Machinists and Aerospace Workers, Local 724, AFL–CIO. Case 4–CD–852

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by the Employer on November 10, 1992, and duly served on the Respondent, International Longshoremen's Association, Local 1566, AFL–CIO, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on November 25, 1992, alleging that the Respondent has violated Section 8(b)(4)(i) and (ii)(D) of the National Labor Relations Act.

The complaint alleges that the Respondent threatened to picket and picketed Holt Cargo Systems, Inc. (the Employer) with an object of forcing or requiring the Employer to assign certain work to employees the Respondent represents rather than to employees represented by the International Association of Machinists and Aerospace Workers, Local 724, AFL–CIO (the Machinists). The complaint further alleges that the Respondent has not been certified as the bargaining representative of employees performing that work, nor determined by the Board to be their exclusive representative. Further, the complaint alleges that, on October 29, 1992, the Board issued a Decision and Determination of Dispute in Case 4–CD–812, awarding the same work in dispute here to employees represented by the Machinists, the respondent in that case.[1]

The Respondent filed an answer to the complaint on December 2, 1992, an amended answer on February 22, 1993, and a revised amended answer on March 9, 1993. In its revised amended answer, the Respondent admits the facts alleged in the complaint, but affirmatively pleads that the Board's award of work in Case 4–CD–812 is erroneous and that employees it represents are entitled to perform the work.

On January 25, 1993, the Machinists filed a motion to intervene. The Regional Director granted this motion on February 2, 1993. On March 1, 1993, the Regional Director issued an order indefinitely postponing the hearing.

On April 7, 1993, the General Counsel filed a Motion for Summary Judgment—incorporating the record in Case 4–CD–812—and a supporting brief. In his brief, the General Counsel argues that the Regional Director properly proceeded to complaint without a 10(k) hearing in this case, Case 4–CD–852, because the Board previously had awarded the work here in dispute to the Machinists in Case 4–CD–812. The General Counsel argues that because the Respondent was a party to, and participated in, the 10(k) hearing in Case 4–CD–812, it would be "an exercise in futility" to require a second 10(k) hearing.[2] The General Counsel further contends that there are no material issues of fact warranting a hearing because the Respondent's sole defense is that the Board should have assigned the disputed work to employees it represents.[3] As the Board's 10(k) award in Case 4–CD–812 "final[ly] dispos[ed]" of this work assignment issue,[4] the General Counsel argues that summary judgment is appropriate.

On April 12, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's Motion for Summary Judgment should not be granted.

On April 14, 1993, the Respondent filed an answer to the Motion for Summary Judgment admitting that there is no genuine issue of fact warranting a hearing. The Respondent instead asserts that the 10(k) award in Case 4–CD–812 was erroneously decided on the facts and the law, and that it should be vacated and the instant 8(b)(4)(D) charge dismissed.

On April 19, 1993, the Respondent filed a memorandum opposing summary judgment, stating that for the reasons it articulated in Case 4–CD–812, and as argued by dissenting Member Oviatt in that case, the Board erroneously had assigned the disputed work to employees represented by the Machinists.[5]

On April 27, 1993, the Machinists filed a memorandum supporting the General Counsel's Motion for Summary Judgment.[6] The Machinists argues that where, as here, the respondent in an 8(b)(4)(D) case refuses to honor a 10(k) award, and there is no factual dispute as to the conduct alleged to violate Section 8(b)(4)(D), summary judgment is appropriate. *Longshoremen ILWU Local 62 (Chevron U.S.A.)*, 241 NLRB 205, 206 (1979), enfd. 89 LC ¶ 12,157 (1980). To hold otherwise, argues the Machinists, would discourage the prompt and permanent settlement of juris-

[1] *Machinists Local 724 (Holt Cargo)*, 309 NLRB No. 42 (Oct. 29, 1992).

[2] *Broadcast Employees NABET (Metromedia, Inc.)*, 230 NLRB 75, 77–78 (1977).

[3] The General Counsel distinguishes *Longshoremen ILWU Local 6 (Golden Grain)*, 289 NLRB 1 (1988), in which the Board held that a respondent may relitigate in an unfair labor practice proceeding whether conduct giving rise to the underlying 10(k) proceeding violated Sec. 8(b)(4)(D). The General Counsel notes that there is no factual dispute here as to the 8(b)(4)(D) allegations.

[4] *Die Sinkers Lodge 140 (Ladish Co.)*, 162 NLRB 528, 531 (1967), enfd. 402 F.2d 407 (7th Cir. 1968).

[5] The Respondent appended to its memorandum opposing summary judgment its brief to the Board in Case 4–CD–812. Although this brief included an argument that there was not reasonable cause to believe that the Machinists had violated Sec. 8(b)(4)(D) in Case 4–CD–812, the Respondent does not raise that argument in this case.

[6] Although the Machinists' memorandum was received by the Board after the April 26 deadline specified in the Notice to Show Cause, it was timely served on the parties.

dictional disputes that Section 10(k) was intended to achieve.

On the entire record, the Board makes the following findings.

Ruling on Motion for Summary Judgment

Pursuant to Section 10(k) of the Act, an evidentiary hearing was conducted in Case 4–CD–812 on November 20 and 21, December 11, 1991, and January 21, 1992. All parties here, including the Respondent, were notified of the hearing and participated in it—presenting evidence, cross-examining witnesses, and submitting briefs to the Board. On October 29, 1992, the Board issued a Decision and Determination of Dispute in Case 4–CD–812 and awarded employees represented by the Machinists the disputed work of:

> plugging, unplugging, hooking, hanging, and monitoring of refrigerated containers from vessel carriers . . . which previously arrived at Holt Cargo Systems, Inc.'s terminal in Gloucester City, New Jersey, and which are now arriving at Holt Cargo Systems, Inc.'s terminal at Packer Avenue in Philadelphia, Pennsylvania.[7]

Pursuant to the Board's Decision and Determination of Dispute, the Employer advised the Respondent on November 6, 1992, that it would assign the disputed work to employees represented by the Machinists. On the same date, the Respondent's president, James Paylor, threatened to picket the Employer. On November 9 and 10, 1992, the Respondent picketed the Employer at the Packer Avenue Terminal. The General Counsel alleges, and the Respondent admits, that a purpose of the threat and picketing was to force or require the Employer, contrary to the Decision and Determination of Dispute in Case 4–CD–812, to assign the disputed work to employees represented by the Respondent. The Respondent's only defense is that the 10(k) award is factually and legally unsupported and, accordingly, that the Respondent cannot be found to have violated Section 8(b)(4)(D).

As there are no facts in dispute, we agree with the General Counsel and the Machinists that summary judgment is appropriate. We also agree with the General Counsel and Machinists that the Respondent is not now entitled to relitigate the threshold issue of whether the 10(k) award in Case 4–CD–812 was proper. The Respondent here was a party to that proceeding. It is well settled that a party to a Board 10(k) proceeding cannot relitigate the Board's work assignment in a subsequent 8(b)(4)(D) case. See, e.g., *Die Sinkers Lodge 140 (Ladish Co.)*, supra; *Broadcast Employees NABET (Metromedia, Inc.)*, supra; *Bricklayers Local 1 v. NLRB*, 475 F.2d 1316, 1322 (D.C. Cir. 1973). Cf. *Golden Grain*, supra; *Laborers Local 721 (Hawkins & Sons)*, 294 NLRB 166, 167 (1989). To permit relitigation would only serve to undercut the finality of the Board's 10(k) determinations and to discourage the prompt and permanent settlement of jurisdictional disputes. Accordingly, we reject the Respondent's argument and grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Employer, Holt Cargo Systems, Inc. (Holt), is a Delaware corporation engaged in warehousing and stevedoring at its pier and warehouse facility at the Packer Avenue Terminal in Philadelphia, Pennsylvania. During the year ending November 25, 1992, the Employer derived gross revenues in excess of $1 million from its Packer Terminal operation where it also received goods valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania. We find that Holt is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

We further find that International Longshoremen's Association, Local 1566, AFL–CIO and the International Association of Machinists and Aerospace Workers Local 724, AFL–CIO are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Determination of Dispute in Case 4–CD–812*

On October 29, 1992, the Board issued a Decision and Determination of Dispute in Case 4–CD–812, awarding to employees represented by the Machinists the refrigeration work of carriers that previously called at Gloucester and that now call at the Packer Avenue Terminal.

B. *The Respondent's Unfair Labor Practices*

On November 6, 1992, the Respondent threatened to picket the Employer, and on November 9 and 10 it picketed the Employer, both with an object of forcing the Employer to reassign to employees the Respondent represents refrigeration work that the Board had awarded to employees represented by the Machinists in Case 4–CD–812. By this conduct, we find that the Respondent violated and is violating Section 8(b)(4)(i) and (ii)(D) of the Act. See, e.g., *Teamsters Local 216 (Granite Rock Co.)*, 296 NLRB 250 (1989).

CONCLUSIONS OF LAW

1. Holt Cargo Systems, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

[7] 309 NLRB No. 42, slip op. at 11–12.

2. The International Association of Machinists and Aerospace Workers, Local 724, AFL–CIO, and the Respondent, International Longshoremen's Association, Local 1566, AFL–CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. The Respondent has violated and is violating Section 8(b)(4)(i) and (ii)(D) of the Act by threatening to picket and by picketing the Employer to force or require it to assign the work described below to employees represented by the Respondent instead of employees represented by the Machinists. The work consists of:

> plugging, unplugging, hooking, hanging, and monitoring of refrigerated containers from vessel carriers, including ABC Line, Maersk Lines, Columbus Lines, and ACT Pace Lines (currently called Blue Star Lines), which previously arrived at Holt Cargo Systems, Inc.'s terminal in Gloucester City, New Jersey, and which are now arriving at Holt Cargo Systems, Inc's terminal at Packer Avenue in Philadelphia, Pennsylvania.

4. The unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i) and (ii)(D) of the Act, we shall order that it cease and desist and take certain affirmative action designed to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, International Longshoremen's Association, Local 1566, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from threatening to picket, picketing, or otherwise restraining or coercing Holt Cargo Systems, Inc., with an object of forcing or requiring it to assign the following work to employees represented by the Respondent, rather than to employees represented by the Machinists:

> plugging, unplugging, hooking, hanging, and monitoring of refrigerated containers from vessel carriers, including ABC Line, Maersk Lines, Columbus Lines, and ACT Pace Lines (currently Blue Star Lines), which previously arrived at Holt Cargo Systems, Inc.'s terminal in Gloucester City, New Jersey, and which are now arriving at Holt Cargo Systems, Inc.'s terminal at Packer Avenue in Philadelphia, Pennsylvania.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its business offices and meeting halls copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of the notice to the Regional Director for posting by Holt Cargo Systems, Inc., if willing, at all locations at the Packer Avenue Terminal where notices to employees customarily are posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. August 9, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten to picket, picket, or otherwise restrain or coerce Holt Cargo Systems, Inc. with an object of forcing or requiring it to assign the following work to employees we represent, instead of to employees represented by the International Association of Machinists and Aerospace Workers, Local 724, AFL–CIO:

plugging, unplugging, hooking, hanging, and monitoring of refrigerated containers from vessel carriers, including ABC Line, Maersk Lines, Columbus Lines, and ACT Pace Lines (currently Blue Star Lines), which previously arrived at Holt Cargo Systems, Inc.'s terminal in Gloucester City, New Jersey, and which are now arriving at Holt Cargo Systems, Inc.'s terminal at Packer Avenue in Philadelphia, Pennsylvania.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1566, AFL–CIO